there is no sufficient reason for extending this rule of practice generally to all proofs of debt in bankruptcy and in companies winding-up proceedings and certainly it has not been shown that such a rule is applied generally in other jurisdictions where the bankruptcy and company laws are similar to those in this Colony.

But the matter does not rest there so far as the present case is concerned. Lim Boon Eng is not proving as an ordinary creditor but as the assignee of seventeen creditors pursuant to an order of the Court giving him liberty to do so. These seventeen creditors are apparently ordinary trade creditors and if any one of them had filed a proof and claimed a dividend instead of assigning his debt to Lim Boon Eng, the Official Receiver would have admitted the proof without hesitation. I see no reason why the Official Receiver should adopt a different attitude towards these debts because the proofs are now submitted by a different person, particularly when that person has obtained the authority of the Court to prove in substitution for the assigning creditors. The position is not unlike that which arose in *In re Humber Ironworks Co.*[3] where, after a winding-up order had been made, some of the contributories bought up debts of the company and then claimed to prove for the full amount of the debts although they had paid much smaller sum for them. The liquidator raised objections to the proofs but the Master of the Rolls said that he had no doubt the claimants were entitled to prove for the full amount of the debts which they had bought. The position would, of course, be quite different if the purchase of the company's debts was a fraudulent trick to reduce the dividends of legitimate creditors and if that could be proved in the present case, the law of bankruptcy would be sufficient to enable the Official Receiver to meet the fraud. It was pointed out by Lord Jessel in *Ex parte Harper*[4] that a trustee in bankruptcy is entitled at any time to apply to expunge a proof in bankruptcy which has been wrongly admitted and the same rule applies in winding-up proceedings. I do not doubt that if in the future evidence becomes available to the Official Receiver which will enable him to prove that this transaction, at present clouded with suspicion, was in fact a fraudulent trick on other creditors, he will not hesitate to apply to the Court to have this proof expunged. However that may be, so far as the present application is concerned, I have, for the reasons which I have given, reached the conclusion that it must fail. The application is accordingly dismissed.

Costs to Lim Boon Eng on the higher scale.

Application dismissed.

Solicitors: *Battenberg & Talma; Drew & Napier.*

NAGALINGAM & ORS. v. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Abdul Hamid and Buhagiar JJ.) April 8, 1957]

[K. L. — F.M. Criminal Appeal No. 45 of 1957]

Evidence — Identification parade — Statements made to police officers at — Whether admissible — Criminal Procedure Code (Cap. 6) s. 113 — Courts Ordinance, 1948, s. 29(1).

The appellants in this case were convicted of gang robbery in contravention of section 395 of the Penal Code. The question in issue was whether the accused were persons who had taken part in it, and the only ground of appeal which the Court felt it necessary to deal at length was that evidence was admitted of statements made to Police Officers at a Police investigation parade held in the course of the Police investigation.

Held: (1) by reason of section 113 of the Criminal Procedure Code (Cap. 6) statements made to Police Officers at a Police identification parade held in the course of a Police investigation, which must be taken to include actions such as the pointing out of persons in response to questions, were not admissible in evidence at the subsequent trial (**Lee Lian & Ors. v. Public Prosecutor**[1] approved);

(2) in this case although the evidence in question was wrongly admitted, it was never questioned that the robbery was committed and there was an overwhelming body of evidence to show that the appellants were participants in it, therefore the case was one which fell within the proviso to section 29(1) of the Courts Ordinance.

Case referred to:—

(1) *Lee Lian & Ors. v. Public Prosecutor* (1956) M.L.J. 191.

COURT OF APPEAL.

K. Chelvanayagam for the appellants.

H. S. Ong (Federal Counsel) for the respondent.

The judgment of the Court was delivered by:—

Thomson C.J.: — The four appellants in this case and a fifth man who has not appealed were convicted before the Chief Justice of gang robbery in contravention of section 395 of the Penal Code and sentenced to varying terms of imprisonment.

At the trial it was not disputed that a very serious gang robbery had been committed. The only question really in issue was whether the accused were persons who had taken part in it.

The conviction have been attacked in this Court on a number of grounds. As to all of these except one we content ourselves with observing that they are without substance. The only ground of appeal with which we feel it necessary to deal at length is that in the case of all the appellants (and also in the case of the accused who has not appealed) evidence was admited of statements made to Police Officers at a Police identification parade held in the course of the Police investigation.

In the case of *Lee Lian & Ors. v. Public Prosecutor*[1], which was not reported until after the trial of the present case, I myself sitting alone in the Court of a Judge held that by reason of section 113 of the Criminal Procedure Code statements made to Police Officers at a Police Identification parade held in the course of a Police investigation, which must be taken to include actions such as the pointing out of persons in response to questions, were not admissible in evidence at the subsequent trial. What I said was:—

"To my mind, it is not an unfair summary of the position in India to say that although there is controversy as to the admissibility of the fact of identification at a police identification parade there is considerable unanimity to the effect that statements made in the course of such a parade are inadmissible by reason of section 162 of the Indian Criminal Procedure Code and that in this connection statements must be construed as including actions such as pointing out a person in response to questions. In the present case I do not think it is necessary for me to express my opinion as to the admissibility of the fact of identification for the evidence in question here is clearly evidence of statements and on this I would not merely follow but would express my agreement with the Indian decisions which have been quoted to the effect that such statements are inadmissible."

I made it clear in that case that I was prepared to give the necessary certificate for the point to be taken further but the Public Prosecutor did not take any steps to have my decision considered by this Court and indeed in the present appeal counsel for the Public Prosecutor has made no attempt to question my decision but has confined himself to asking for some guidance as to where the line is to be drawn between the bare fact of identification which may be admissible and statements evidence of which is certainly not admissible.

For myself I see no reason to depart from anything I said in *Lee Lian's* case and my brothers Buhagiar and Abdul Hamid agree with what I said there. On the other hand we regret that in the present case we are unable to take what was said in *Lee Lian's* case any further. To do so would be to commit the forensic sin of expressing an opinion as to hypothetical circumstances for in the present case the various identifications of the appellants were made in such circumstances as to be tantamount to statements.

But while we are of the opinion that the evidence in question in the present case was wrongly admitted we are satisfied that the case is one which falls within the proviso to section 29(1) of the Courts Ordinance.

It was never questioned that the robbery was committed and there was an overwhelming body of evidence to show that the four appellants and their fellow accused were the participants in it. Rightly considered the evidence which we have held to be inadmissible went to weaken rather than strengthen the Prosecution case. But making every possible allowance for that we fail to see how any Judge could have refrained from convicting all the accused.

The appeals against conviction are accordingly dismissed in each case.

As regards the sentences imposed, the offence was a serious one and in our opinion if the sentences erred at all it was in the direction of leniency.

Appeals dismissed.

KOH CHEE CHONG v. CHOP FOOK ON

[A. C. J. (Whyatt C.J.) May 4, 1956]

[Singapore — District Court Appeal No. 26 of 1955]

Landlord and Tenant — Recovery of possession — Illegality of rent — Not specifically pleaded — Whether Court bound to take notice of unpleaded facts — Circumstances in which Court will act on its own initiative — Control of Rent Ordinance, 1953 (now Cap. 242).

The appellant was the defendant in an action for recovery of possession of certain premises. The District Judge had found on the facts that rent was payable monthly and had not been tendered. The appellant did not challenge these findings at the hearing of the appeal, but he argued that the Court had no jurisdiction to make an order for possession as the plaintiff had not proved that $50 per month was a lawful rent, there being no evidence on the record to show that its increase to $50 from $31.50 per month which he paid when he first became a tenant had been approved by the Rent Conciliation Board or that $50 per month was not in excess of standard rent.

Held: (1) if the defendant had wished to rely upon any facts as showing illegality he should have pleaded them;

(2) in this case there never was any issue *inter partes* as to whether the rent of $50 p.m. was a lawful rent and consequently the defendants' contention on this point failed;

(3) where a contract is *ex facie* legal but the unpleaded facts indicated that it might be tainted with illegality, the Court would adopt a more cautious attitude before acting on its own initiative. In a case of this kind the Court would not act upon the unpleaded facts unless it was satisfied that the whole of the relevant circumstances were before it. If the defence of illegality had been raised on the pleadings, the Court would be entitled to assume that all the relevant facts were before it but it was otherwise if it was not so pleaded;

(4) in this case, so far from being certain that all the requisite material was before it, it was clear to the Court that the essential evidence was missing, and therefore the appeal failed.

Cases referred to:—

(1) *Edler v. Auerback* (1949) 2 All E.R. 692, 697.

(2) *North Western Salt Co. v. Electrolytic Alkali Co., Ltd.* (1914) A.C. 469, 476.